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ARIZONA CORPORATION COMMISSION

September 18, 2003

VIA ELECTRONIC MAIL

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Joint Petition for Forbearance from the Current Pricing Rules for
The Unbundled Network Element Platform
WC Docket No. 03-189

Dear Ms. Dortch:

Attached for filing are Comments of the Arizona Corporation Commission.

Please confirm that these Comments have been filed.

Sincerely,

/s/ Maureen Scott

Maureen Scott
Attorney

MS:nrr
Attachment

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Joint Petition for Forbearance From the)	WC Docket No. 03-189
Current Pricing Rules for the)	
Unbundled Network Element Platform)	

COMMENTS OF THE ARIZONA CORPORATION COMMISSION

I. Introduction

The Arizona Corporation Commission ("ACC") hereby submits its Comments to the Joint Petition of Qwest Corporation, BellSouth Telecommunications, Inc., and SBC Communications Inc. for Expedited Forbearance from the Current Total Element Long Run Incremental Cost ("TELRIC") Pricing Rules for the Unbundled Network Element Platform ("UNE-P") filed on July 31, 2003 ("Joint Petition").¹ The Joint Petition also seeks forbearance from the Federal Communications Commission's ("FCC's") decision to permit UNE-P carriers to collect per-minute access charges from long distance carriers. The Joint Petition seeks the same forbearance that was requested in the Petition for Expedited Forbearance of the Verizon Telephone Companies from the Current Pricing Rules for the UNE-P that was filed with the FCC on July 1, 2003 ("Verizon Petition").²

II. Summary of Position

Several parties have filed initial comments on the Verizon Petition. The ACC supports the comments filed by the National Association of Regulatory Utility Commissioners ("NARUC"), the California Public Utilities Commission ("CPUC"), the

¹ WC Docket No. 03-189.

² WC Docket No. 03-157.

Pennsylvania Public Utility Commission (“PA PUC”), the New Jersey Board of Public Utilities (“NJ Board”), and the New Jersey Division of the Ratepayer Advocate (“NJ Advocate”) in that docket and believes that the Comments also apply to the Joint Petition. The ACC recommends that the FCC deny the Joint Petition for forbearance.

III. Discussion

A. Requirements For Granting Forbearance Have Not Been Met

Section 10 of the Telecommunications Act of 1996 (“Act”), 47 U.S.C. § 160, sets forth three requirements that must be met in order for the FCC to grant a petition for forbearance. In order for the FCC to forbear from applying its regulations, the FCC must determine that: “(1) enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory” 47 U.S.C. § 160 (a)(1); “(2) enforcement of such regulation or provision is not necessary for the protection of consumers” 47 U.S.C. § 160 (a)(2); and “(3) forbearance from applying such provision or regulation is consistent with the public interest.” 47 U.S.C. § 160 (a)(3). Pursuant to 47 U.S.C. § 160 (b), the FCC, in making the determination, “shall consider whether forbearance from enforcing the provision or regulation will promote competitive market conditions, including the extent to which such forbearance will enhance competition among providers of telecommunications services.”

The Joint Petition failed to make a showing or offer compelling evidence to support its claims that the three requirements for granting forbearance have been met. In addition, it failed to demonstrate that the granting of the relief requested will promote or enhance competition among telecommunications service providers. As such, the ACC urges the FCC to deny the Joint Petition.

B. Modifying Total Element Long Run Incremental Cost ("TELRIC") Through a Forbearance Petition is Inappropriate

As mentioned by the parties listed above, and numerous others, a petition for forbearance is not the appropriate vehicle by which TELRIC pricing concerns should be addressed. The FCC has stated that it will open a proceeding this year to examine the TELRIC methodology and its application to Unbundled Network Elements ("UNEs"), including UNE-P. That proceeding will allow for a thorough review and analysis of TELRIC which is necessary to ensure that the FCC has sufficient information on which to base any changes to TELRIC pricing. As the CPUC and PA PUC recognize, if TELRIC is abandoned, an equally well-researched and analyzed alternative is imperative. The TELRIC methodology was not developed through a forbearance petition for obvious reasons. Its replacement should not be either.

C. Triennial Review Proceeding Cautions Against the Premature Action Recommended in the Forbearance Petition

On August 21, 2003, the FCC released its Triennial Review Order.³ This Order requires state commissions to review the status of competition within their states to determine whether particular UNEs, local circuit switching specifically, should continue to be unbundled for competitive entrants. These individual state proceedings will impact which UNEs will still be available to CLECs. In addition, the Triennial Review Order provides further clarification of TELRIC pricing rules. The Joint Petition, however, seeks to modify the pricing of UNEs before it is even known which UNEs are available and before the Triennial Review Order clarifying TELRIC pricing has been fully reviewed by states and the Regional Bell Operating Companies ("RBOCs") themselves. Clearly, the Joint Petition is premature in these respects and should be denied.

³ *In the Matter of Section 251 Unbundling Obligations of ILECs*, Report and Order and Order On Remand and Further Notice of Proposed Rulemaking in CC Docket No. 01-338, CC Docket No. 96-98, and CC Docket No. 98-147 (Rel. August 21, 2003) ("*Triennial Review Order*").

D. Forbearance Without a Replacement Methodology will not Enhance or Further Competition

Numerous legal proceedings have validated the lawfulness of TELRIC.⁴ Despite the attempts of RBOCs, various courts, including the U.S. Supreme Court, have upheld the TELRIC methodology.

TELRIC has been instrumental in furthering the primary intent of the Act, promoting competition. Sections 251 and 252 of the Act were created to enable new entrants into the telecommunications industry to gain market share. This is a preliminary step before a competitor can build facilities and possibly be assured of some level of success in the market. In fact, the very forbearance test that Qwest, BellSouth, and SBC insist has been met requires consideration of whether forbearance will enhance and encourage competition. As mentioned above, 47 U.S.C. § 160 (b) states that the FCC “shall consider whether forbearance from enforcing the provisions or regulations will promote competitive market conditions, including the extent to which such forbearance will enhance competition among providers of telecommunications services.” It would be premature to grant the Joint Petition without the benefit of a fully developed record on the TELRIC methodology and the extent to which changes to TELRIC or alternative pricing methodologies are consistent with the Act.

E. Any Change to the Current Access Charge Methodology Should Be Made in the Context of a Rulemaking Where the Commission Has the Benefit of a Fully Developed Record With Participation By All Interested Parties

The Joint Petition also seeks to deny UNE-P carriers the ability to collect per-minute access charges from long distance carriers. The Joint Petitioners state that they support Verizon’s comments on this issue. Verizon stated that it is the company actually

⁴ Response of the California Public Utilities Commission to Verizon’s Petition for Expedited Forbearance, August 18, 2003, p. 7-10 (WC Docket 03-157).

providing exchange access when a CLEC serves customers using UNE-P since UNE-P is basically equivalent to a resale arrangement.

Once again the Joint Petition requests relief far beyond what would be appropriate in the context of a Petition for Forbearance. First, it is clear that the Petitioners do not meet the criteria for forbearance set forth above. Second, it is inappropriate to make changes in broad based policy determinations in the context of a petition for forbearance without the benefit of the fully developed record which is part of the rulemaking process. Third, the Commission has always treated the purchase of unbundled network elements as a form of facilities-based competition which would mean that the payment of access charges to the CLEC is appropriate.

III. Conclusion

For the forgoing reasons, the ACC urges the FCC to deny the Joint Petition for forbearance.

RESPECTFULLY SUBMITTED this 18th day of September, 2003.

/s/

Maureen A. Scott
Attorney, Legal Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007
Telephone: (602) 542-6022

Attorney for the Arizona Corporation Commission